

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0059E

IN THE MATTER OF THE VERIFIED APPLICATION OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. FOR A FOR APPROVAL OF THE RETIREMENT OF THE NUCLA STATION, AND REQUEST FOR WAIVER OF RULE 3103(D).

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
GRANTING MOTION TO VACATE PROCEDURAL
SCHEDULE AND VACATING EVIDENTIARY HEARING**

Mailed Date: August 26, 2020

I. BY THE COMMISSION

A. Background

1. On February 14, 2020, Tri-State Generation and Transmission Association, Inc. (Tri-State) filed a Verified Application and Request for Waiver of Rule 3103(d) (Application) in which it requests that the Commission: (a) approve the retirement of the Nucla Station and the abandonment or discontinuation of such facilities without equivalent replacement; and (b) waive the notice requirements of Commission Rule 3103(d) of the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3. The Nucla Station ceased operations on September 9, 2019, which Tri-State officially announced on September 19, 2019. Tri-State had entered into an agreement with the Colorado Department of Public Health and Environment, the U.S. Environmental Protection Agency, WildEarth Guardians, and the National Parks Conservation Association in September 2016 to retire the Nucla Station by December 31, 2022.¹

¹ Application at 2.

Tri-State moved up the retirement date due to the “dwindling” use of the Nucla Station caused by the inability of the Nucla Station to produce electricity at a competitive cost compared to natural gas and renewable-generated electricity.²

2. Later on February 14, 2020, the Commission issued notice of the Application.

3. On March 13, 2020, the Office of Consumer Counsel (OCC) filed a notice of intervention and entry of appearance.

4. On March 16, 2020, Western Resource Advocates (WRA) filed a Motion for Leave to Participate as *Amicus Curiae* and Response to Tri-State’s Request to Waive Commission Rules (WRA’s *Amicus* Motion).

5. On March 17, 2020, Trial Staff of the Commission (Staff) filed a notice of intervention by right and entry of appearance.

6. On March 23, 2020, Tri-State filed an Unopposed Motion Regarding Request for Waiver, Additional Notice, and Limited Extended Intervention Period (Unopposed Motion). Tri-State states that Staff, the OCC, and WRA do not oppose the Unopposed Motion.

7. On March 24, 2020, Tri-State filed a Response to WRA’s *Amicus* Motion in which it stated that it did not oppose WRA’s participation as *amicus curiae* in this proceeding.

8. On March 30, 2020, the the Application was automatically deemed complete pursuant to Rule 1303(c)(III) of the Commission’s Rules of Practice and Procedure.³

² Direct Testimony of Barr W. Ingold at 7:8-14; Direct Testimony of Robert W. Wolaver at 3:12-23 (both filed with Application).

³ 4 CCR 723-1.

9. On April 23, 2020, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition.⁴ The proceeding was subsequently assigned to the undersigned ALJ. In its Decision, the Commission directed the ALJ to investigate several issues, including “how any disposition of water rights that Tri-State owns in connection with the Nucla Station’s operations will be in the public interest.”⁵

10. On May 1, 2020, the ALJ issued Decision No. R20-0329-I that, among other things, granted-in-part and denied-in-part the Unopposed Motion; granted WRA’s *Amicus* Motion; ordered supplemental direct testimony on questions identified in the decision; scheduled an in-person prehearing conference for June 11, 2020; and required Tri-State to confer with Staff, the OCC, and any additional towns, counties, and/or entities seeking intervention regarding a schedule for this proceeding, and to file a report of the results of the conferral by June 9, 2020.

11. On May 28, 2020, the Towns of Naturita and Nucla, the County of Montrose, and the Colorado Co-Operative Company (CCC) filed a Joint Motion to Intervene (Joint Motion to Intervene), and WRA filed a Motion for Late Intervention (WRA’s Late Intervention).

12. On May 29, 2020, Tri-State filed the supplemental testimony ordered in Decision No. R20-0329-I. In that supplemental direct testimony, Barry W. Ingold, Tri-State Senior Vice President, Generation, stated that Tri-State currently has “no definitive plans to transfer any public utility assets, including water rights, as a result of decommissioning [the] Nucla Station.”⁶

⁴ Decision No. C20-0282-I.

⁵ Decision at 3 (¶ 7).

⁶ Supplemental Direct Testimony of Barry W. Ingold at 11:4-5.

13. On June 1, 2020, the ALJ issued Decision No. R20-0413-I that converted the in-person prehearing conference into a remote prehearing conference due to the COVID-19 pandemic and provided instructions on how to participate remotely.

14. On June 2, 2020, Tri-State filed a Response in Opposition to WRA's Motion for Late Intervention and a Response to the Joint Motion to Intervene in which Tri-State stated that it did not oppose the interventions of the Towns of Naturita and Nucla and the County of Montrose, but did oppose the interventions of CCC and WRA because Tri-State's water rights, which CCC and WRA identified as their sole interest in this proceeding, are not at issue in this proceeding.

15. On June 9, 2020, Tri-State filed its Conferral Report, as required by Decision No. R20-0329-I.

16. On June 11, 2020, the remote prehearing conference took place.

17. On July 14, 2020, the ALJ issued Decision No. R20-0504-I that extended the statutory deadline, granted the interventions of Staff, the OCC, Towns of Naturita and Nucla and the County of Montrose (Local Governments), denied the interventions of WRA and CCC, established a prehearing schedule, scheduled the remote hearing for August 27 and 28, 2020, and addressed the filing and presentation of electronic exhibits.

18. On August 17, 2020, the parties to this proceeding filed an Unopposed Unanimous Stipulation for Settlement and Unopposed Motion to Vacate Procedural Schedule (Unopposed Stipulation and Motion).

B. Unopposed Stipulation and Motion

19. In the Unopposed Stipulation and Motion, Staff states:

On the basis of Tri-State's evidence and representations in Rebuttal Testimony, Staff agrees that the Application should be granted. Staff finds that the description of facilities to be included in Nucla Station's decommissioning are

sufficiently detailed. And Tri-State has committed itself to seek prior Commission review before any loss of its existing water rights, be it through a sale or some other conveyance of Tri-State's water right interests. Relying on the information and assurances in Tri-State's Rebuttal Testimony, as well as all other prefiled written testimony and attachments submitted by the parties to this proceeding, Staff concludes that the Commission should grant Tri-State's application to amend its CPCN for Nucla Station to discontinue and dismantle its Nucla Station facility without replacement.⁷

20. Similarly, the OCC states:

The OCC agrees that the Application should be granted because the only substantive request is that "the Commission approve the retirement of the Nucla Station and the abandonment or discontinuation of such facilities without equivalent replacement," and there is no approval of the issues OCC or the Commission raised on the decommissioning process, costs, water or any other utility asset transfers or rights, etc. The OCC also withdraws the request for hearing included in its Notice of Intervention.⁸

21. Finally, the Local Governments state:

On the basis of Tri-State's commitment to seek prior Commission review before any transfer of its existing water rights and the assurances of Tri-State to Montrose County, the Town of Nucla, and the Town of Naturita that Tri-State will continue discussions outside of this proceeding related to a just transition for the Nucla Station employees and the impacted communities, the Local Governments agree the Application should be granted.⁹

22. Based on the foregoing, "the Parties jointly request that the Commission vacate the scheduled evidentiary hearing in this proceeding, and decide this matter based on the pre-filed written testimony and this Stipulation."¹⁰

C. Analysis

23. The ALJ has reviewed the Unopposed Stipulation and Motion and the written testimony filed in this proceeding. Based on that review and the statements made by the parties

⁷ Unopposed Stipulation and Motion at 10 (¶ 24(a)) (Footnotes 2 and 3 omitted).

⁸ *Id.* at 10 (¶ 24(b)).

⁹ *Id.* at 11 (¶ 24(c)).

¹⁰ *Id.* at 12-13 (¶ 28).

in the Unopposed Stipulation and Motion and quoted above, the ALJ finds and concludes that the parties have established good cause to vacate the evidentiary hearing scheduled for August 27 and 28, 2020. A Recommended Decision addressing the Application and the Unopposed Stipulation and Motion shall issue as soon as reasonably possible.

II. ORDER

A. It Is Ordered That:

1. For the reasons stated above, the unopposed request to vacate the evidentiary hearing contained in the Unopposed Unanimous Stipulation for Settlement and Unopposed Motion to Vacate Procedural Schedule filed on August 17, 2020 is granted.
2. The evidentiary hearing scheduled for August 27 and 28, 2020 is vacated.
3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director